

**MASTER FILE NO.**  
**15-CV-222-KOB**

)THIS DOCUMENT RELATES TO ALL  
)CASES.

CASE MANAGEMENT ORDER No. 3 WITH PRELIMINARY SCHEDULING  
ORDER

As stated on the record of the June 4, 2015 Status Conference, the court **SETS** the following deadlines:

- |  |   |
|--|---|
| a. Last Day to Conduct R. 26(f) Conf:        | July 2, 2015  |
| b. File Motion re Proposed Protective Order: | June 26, 2015   |
| c. File Motion re Proposed ESI Protocol:     | June 26, 2015   |
| d. Exchange R 26(a) Initial Disclosure:      | July 15, 2015   |
| e. File Master Complaint:                    | June 29, 2015   |
| f. File Responsive Pleading:                 | August 31, 2015   |
| g. File Joint Status Report                  | October 15, 2015  |
| h. File Joint Status Report                  | January 15, 2016  |
| i. Deadline to Amend Pleadings/Join Parties: | February 1, 2016  |
| j. File Motions for Class Cert:              | April 1, 2016   |
| k. File Joint Status Report                  | June 15, 2016   |
| l. Exchange of Expert Reports:               | Ps' Expert Discl. August 1, 2016<br>Ds' Expert Discl. September 1, 2016 |
| m. Exchange of Expert Rebuttal Reports:      | October 3, 2016   |
| n. File Joint Status Report                  | November 15, 2016   |

- |  |                  |
|--|------------------|
| o. All Discovery Cut-Off (including expert): | December 1, 2016 |
| p. Dispositive Motion Deadline:              | January 16, 2017 |
| q. Pre-trial Conference:                     | June 2017        |
| r. Trial:                                    | August 2017      |

## II. Other Pretrial Matters

### A. Discovery

All discovery must be commenced in time to be completed by the date listed above.

However, no extension of the discovery deadline will be granted unless the party requesting the extension affirmatively shows actual efforts taken to obtain all needed discovery within the allocated time frame. (i.e., no extensions will be granted when counsel has not taken full advantage of the allocated discovery time.).

Any requests for extension of any deadlines must be filed at least **two business days prior to that deadline** to be considered. **Good cause must be shown for the extension of any deadline.** Good cause includes a showing of what discovery, etc., has already been completed and precisely why the deadline(s) cannot be met.

The date for disclosure of expert witnesses includes providing a complete report under Rule 26(a)(2)(B) from any specially retained or employed expert.

Disclosure of the final lists of trial witnesses and exhibits under Rule 26(a)(3) must be filed and served by the plaintiff(s) and by the defendant(s) **thirty days prior to trial. The 14-day period for objections set forth in Rule 26(a)(3) shall apply, except the list of objections should be served but not filed. The parties must meet and confer in an effort to resolve the objections before filing any objections to the evidence.**

### **B. Discovery Disputes**

No motions concerning discovery matters should be filed until counsel have exhausted all efforts to resolve the dispute among themselves. Every discovery motion must affirmatively state all efforts to resolve the disputed matter; failure to attempt to resolve the dispute without court intervention or to affirmatively so state will result in the automatic denial of the motion. “All efforts” specifically requires actual discussions in person or by phone among counsel concerning the dispute.

Discovery disputes generally will be referred to a magistrate judge for handling. Because decisions concerning discovery rest largely within the discretion of the judge, objections to a magistrate’s ruling on a discovery matter should rarely be made and will rarely be granted absent a clear showing that the decision was clearly erroneous or contrary to law. See 28 USC § 636.

### **C. Submission of Motions**

All potentially dispositive motions and motions for class certification must comply as much as is practical with this court’s requirements stated in "Appendix II" available on the court's website at [www.alnd.uscourts.gov](http://www.alnd.uscourts.gov) under the court information for Judge Bowdre. The court will enter a separate briefing schedule for any dispositive motions and for other motions requiring extensive briefing. Counsel shall refrain from filing any motion for summary judgment addressing a claim when a reasonable person would recognize that genuine issues of material fact exist as to that claim.

All motions without deadlines set above must be filed promptly after the movant becomes aware of facts indicating the need to file a motion with a notation whether the motion is opposed. All briefs as well as pleadings should be filed with the Clerk of the Court. No courtesy copies of pleadings will be accepted, but the court **requires courtesy copies of briefs and evidentiary**

**submissions to be delivered to the clerk's office (not to chambers) marked as judge's courtesy copy.**

The court shall promptly dispose of nondispositive motions. Without prior notice, it may summarily dispose of perfunctory and/or other motions where the facts and law appear to be clear. Therefore, **when served with a motion, a party who wishes to oppose it should immediately telephone the court's chambers and so advise.** Opposing briefs and documents shall follow within **three days** after the motion is filed if notice is first given to the court of an intent to file opposition.

ALL briefs, whether on pretrial or post trial motions, must comply with the requirements of "Appendix II" as far as practicable given the nature of the particular motion, including page limitations, unless the court grants specific permission to deviate. Unless the motion is dispositive, parties are not required to comply with Section D of Appendix II.

All motions, responses, briefs, and memoranda relating to any matter set for hearing before **the court must be filed electronically no later than 4:30 p.m.**, the day before the date of the hearing. Papers filed after that time will not be considered at the hearing.

#### **D. Pretrial**

Parties will receive an order approximately a month prior to the pretrial date listed above, indicating the precise date and time at which they are to report for the pretrial conference. Pretrial order instructions are available on the court's website at [www.alnd.uscourts.gov](http://www.alnd.uscourts.gov) under the court information for Judge Bowdre and may be amended to correspond with the needs of this MDL. A trial date will be set at or before the pretrial conference.

### **E. Trial Exhibits**

Each party that anticipates offering as substantive evidence six exhibits or more shall premark such exhibits in advance of trial, using exhibit labels and exhibit lists available from the Clerk of Court. At least **thirty days prior to trial**, unless the court subsequently sets another deadline, counsel shall serve and file a copy of the exhibit list under Rule 26(a)(3), with the exhibits being made available for inspection by opposing counsel; the presentation of evidence at trial shall not ordinarily be interrupted for opposing counsel to examine a document that has been so identified and made available for inspection. Exhibits not listed will not be admitted in the case-in-chief unless good cause is shown. Within **fourteen days** of receipt of the exhibit list, unless the court subsequently sets another deadline, counsel shall serve but not file a list of any objections to the exhibits, and shall meet and confer in an effort to resolve the objections. Any unresolved objections regarding the admissibility of any evidence should be submitted by motion *in limine* at least **five business days prior to trial**, unless the court subsequently sets another deadline.

### **III. Action Items for Counsel**

Counsel shall perform the following action items before the next status conference.

**A. Deadlines** - the parties **SHALL** comply with the deadlines set above for conducting a Rule 26(f) conference; exchanging initial disclosures and filing motions regarding the Proposed Protective Order and Proposed ESI Protocol; and filing the Master Complaint.

**B. Special Master** - the parties **SHALL** consult with one another and prepare a Joint Proposed Order appointing Ed Gentle as Special Master and setting forth his duties.

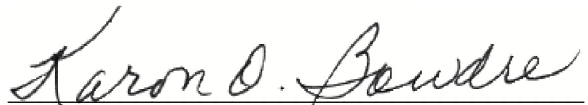
**C. MDL Website** - the PSC **SHALL** consult with counsel for Defendants regarding items on the MDL Website and content of those items, and then obtain the court's approval of the website information before going "live."

**D. Time and Billing** - the PSC **SHALL** consult with Local Liaison Counsel to prepare proposed protocols and forms for time and billing.

#### **IV. July Status Conference and Joint Status Report**

This matter is **SET** for a status conference on **Tuesday, July 14, 2015 at 9:30 AM** at the Hugo L. Black U.S. Courthouse, 1725 5th Avenue North, Birmingham, Alabama in the courtroom on the 8th floor. The PSC, Defense Counsel, and Local Liaison Counsel **SHALL** submit to the court via email to bowdre\_chambers@alnd.uscourts.gov on or before **Monday, July 6, 2015** a JOINT Status Report proposing an Agenda for the **July 14** status conference. Counsel shall be prepared at the status conference to discuss with the undersigned the action items listed above; whether the filing of motions to dismiss or motions for more definite statement are likely; and, if so, a proposed briefing schedule.

DONE and ORDERED this 18<sup>th</sup> day of June, 2015.

  
KARON OWEN BOWDRE  
CHIEF UNITED STATES DISTRICT JUDGE